

October 2, 2007

**REMARKS**

After entry of this Amendment, the pending claims are: claims 1-44, 46-48 and 56-63 . The Office Action dated July 2, 2007 has been carefully considered. Claims 45 and 49-55 were previously cancelled without prejudice. Claims 1, 33 and 56 have been amended. The Examiner is thanked for allowance of claims 7-12, 19-44, 46-48 and 58-63. No new matter has been added. Reconsideration and allowance of the pending claims in view of the above Amendments and the following Remarks is respectfully requested.

In the Office Action dated July 2, 2007, the Examiner:

- rejected claims 1-4, 13-15, 17 and 18 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,342,057 to Brace et al. (“Brace”);
- rejected claims 1, 5, 6, 13, 14, 56 and 57 under 35 U.S.C. 102(b) as being anticipated by Brace;
- rejected claim 16 under 35 U.S.C. 103(a) as being unpatentable over Brace.

This Response is being filed in response to the outstanding Office Action, dated July 2, 2007, to which Applicants were given a three-month period to reply. Accordingly, the present response is being timely filed.

**INDEPENDENT CLAIM 1**

Independent claim 1 has been rejected as being anticipated by Brace. As amended, independent claim 1 requires, *inter alia*, a drill guide having a guide barrel and an alignment assembly wherein “the guide barrel is fixed and integral relative to the alignment assembly.”

October 2, 2007

Brace discloses a surgical drill guide assembly 100 including a drill guide alignment assembly handle 122 and alignment device 110 that includes a guide barrel 136 and an actuation bar 116 wherein the guide barrel 136 is pivotably adjustable relative to the alignment device 110.

It is respectfully submitted that Brace does not disclose, teach, or suggest a guide barrel that is fixed and integral relative to the alignment assembly.

Therefore, it is respectfully submitted that Brace does not disclose, teach, or suggest all of the limitations of independent claim 1. Thus, it is respectfully submitted that independent claim 1 is allowable over the cited prior art. Withdrawal of these rejections and allowance of independent claim 1 is respectfully requested.

Furthermore, as claims 1-6, 13-15, 17 and 18 all depend from independent claim 1, it is submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 1-6, 13-15, 17 and 18 is also respectfully requested.

With respect to dependent claim 16 which was rejected under 35 U.S.C. 103(a) as being unpatentable over Brace, because according to the Examiner it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device with a bearing of a known material other than metal. Without addressing the merits of this argument, it is respectfully submitted that, for at least the above-identified reason, Brace does not disclose, teach or suggest all of the limitations of dependent claim 16. Thus, it is respectfully submitted that dependent claim 16 is allowable over the cited prior art. Withdrawal of this rejection and allowance of dependent claims 16 is respectfully requested.

October 2, 2007

**INDEPENDENT CLAIM 56**

Independent claim 56 has been rejected as being anticipated by Bracc. As amended independent claim 56 requires, *inter alia*, a drill guide having a location post having a longitudinal axis, and wherein the location post is pivotable about the longitudinal axis and relative to the bone plate recess, when the location post is engaged in the bone plate recess, to allow the guide barrel to be selectively aligned with the first and second fastener holes.

Brace discloses a location post that cannot be pivoted while engaged in a bone plate recess. Specifically, as best shown in Figure 11, the alignment device includes a neck 220 that is key-shaped.

It is respectfully submitted that Brace does not disclose, teach, or suggest a drill guide having a location post wherein the location post is pivotable relative to the bone plate recess, when the location post is engaged in the bone plate recess, to allow the guide barrel to be selectively aligned with the first and second fastener holes.

Therefore, it is respectfully submitted that Brace does not disclose, teach, or suggest all of the limitations of independent claim 56. Thus, it is respectfully submitted that independent claim 56 is allowable over the cited prior art. Withdrawal of these rejections and allowance of independent claim 56 is respectfully requested.

Furthermore, as claim 57 depends from independent claim 56, it is submitted that claim 57 is equally allowable. Withdrawal of these rejections and allowance of claim 57 is also respectfully requested.

**CONCLUSION**

Application No. 10/823,215

October 2, 2007

No fee is believed due for this submission. If, however, the Commissioner determines otherwise, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicants' attorney at the number listed below.

Date: October 2, 2007

Respectfully submitted,

/Natalie E. McClurg/

Natalie E. McClurg  
Reg. No. 57,056

Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, NY 10038  
(212) 806-5567

---

For: Brian M. Rothery  
Registration No. 35,340

Attorney for Applicants  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
(212) 806-6205